

APPEAL NO. 031841  
FILED AUGUST 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 25, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 11th, 12th, 13th, or 14th quarters. The claimant appealed. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rules 130.102(d)(4) and 130.102(d)(5). The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that she reached maximum medical improvement on May 12, 1998, with an impairment rating of 25%; that she has not commuted any portion of her impairment income benefits; that the 11th quarter began on April 17 and ended on July 16, 2002, that the 12th quarter began on July 17 and ended October 15, 2002, that the 13th quarter began October 16, 2002, and ended January 14, 2003, that the 14th quarter began January 15 and ended on April 15, 2003; and that the qualifying periods for the quarters at issue is from January 3, 2002, to January 2, 2003. The claimant based her request for entitlement to SIBs on a total inability to work although she looked for work in the qualifying period for the 11th quarter.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer noted in the Statement of the Evidence that the medical evidence dated after January 29, 2001, provides only conclusory statements that the claimant is disabled and unable to work. The evidence sufficiently supports the hearing officer's determination that, during the qualifying period for the 11th, 12th, 13th, and 14th quarters, the claimant failed to prove she was unable to perform any type of work in any capacity, failed to provide a narrative report from a doctor which specifically explained how the injury caused a total inability to work, and thus did not make a good faith effort to obtain employment commensurate with her ability.

With respect to the claimant's job search for the 11th quarter, Rule 130.102(d)(5) provides that an injured employee has made a good faith effort to obtain employment

commensurate with the employee's ability to work if the employee has provided sufficient documentation as described in subsection (e) of Rule 130.102 to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3) and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made. Although the hearing officer specifically found that the claimant documented a job search effort for every week of the qualifying period for the 11th quarter, she found the claimant did not conduct a well-structured job search plan and was not persuaded that the claimant made a good faith effort to obtain employment commensurate with her ability to work. Whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period in dispute was a fact question for the hearing officer to determine from the evidence presented. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ACE USA/OR** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN  
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200  
IRVING, TEXAS 75063.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Veronica Lopez-Ruberto  
Appeals Judge